SINGLE BENCH

c.f. 101 (1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. NO. 4659 /2005

Petitioner/ Defendant : M/s. Dhan Laxmi Poultry Farm Pro. Goutam Kumar Ghosh, S/o. Late Shri Dhananjay Ghosh , aged about 40 years, R/o. 104, Geetanjali Society, Sector II, Raipur (C.G.)

VERSUS

Respondents/ Plaintiff

1. Venkateshwara Feed Tradors . Pro. Rajendra Kumar Pillai, Address- Egg Market, Telibandha , G. E. Road, Raipur (C.G.)
Through Special power of attorney holder Shri Lukasnath S/o Shri N. K. Nath C/o. Venkateshwara Feed Tradors . Pro. Rajendra Kumar Pillai, Address- Egg Market, Telibandha , G. E. Road, Raipur (C.G.)

P.R. No. 4914/05 Presented by Shri S.S. Raj Pasl dated 26.8.05

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ....W.P.No..4659/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

26-9-2005

Shri Sachin Singh Rajput, counsel for the petitioner.

Heard learned counsel for the petitioner.

The petitioner has preferred this writ petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 14-9-2005 passed by the 5th Additional District Judge, Raipur in civil Suit No.2-B/2005 whereby the right of the defendant to file written statement has been closed.

The impugned order is perverse and illegal on the face of it, therefore, notice is not being issued to the respondent, as the issuance of notice is going to further delay proceeding of the suit. However, respondent/plaintiff will be at liberty to move an application for modification of this order, if he feels aggrieved.

The respondent herein filed a civil suit for recovery of an amount of Rs.1,13,985/- against the petitioner herein and the suit was registered as Civil Suit No.2-B/2005.

Perusal of the various order sheets of the suit shows that for the first time on 2-5-2005 learned counsel for the petitioner appeared and he asked for copies of the documents. Perusal of the order sheet dated 5-7-2005 shows that on that day learned counsel for the petitioner herein Mr. S.C. Rathore submitted that the copies of the documents have been delivered to him. Thereafter, he sought an adjournment for filing written statement. The matter was fixed for 25-7-2005. Again he sought adjournment. Thereafter, the matter was fixed for 10-8-2005 and on that day also adjournment was sought and the matter was fixed for 23-8-2005. On 23-8-2005, an application under Order 11 Rule 14 read with Order 7

SP/FS/2005 - 20,000

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Rule 14-A of the C.P.C. was filed and the matter was fixed for 1-9-2005. On 1-9-2005, on account of death of some counsel the matter was adjourned and fixed for 14-9-2005. Perusal of the order dated 10-8-2005 reveals that on the said date the petitioner herein was granted time till 23-8-2005 on payment of cost of Rs.50/-. On 23-8-2005, written statement was not filed by the petitioner. However, an application on behalf of the petitioner was filed under Order 11 Rule 14 read with Order 7 Rule 14-A of the C.P.C.. When the matter was called on 14-9-2005, reply of this application was not filed on behalf of the respondent. However, in response to the application filed by the petitioner herein power of attorney executed by Rajendra Kumar in favour of Lukasnath was filed, as the suit was filed by Lukasnath which was challenged by the petitioner herein in his application that he has no right to file the suit. As Lukasnath was the Power of attorney holder, therefore, an application on behalf of the petitioner was filed stating that the power of Attorney must be filed along with the plaint. In compliance of the same power of attorney was filed on 14-9-2005. Learned Additional District Judge further observed that the petitioner herein was required to file written statement within a period of 30 days as per the amended provision and he has not filed the same, therefore, his right to file written statement stands closed and now, he has no right to file written statement. Learned counsel for the petitioner submitted that in the first instance the Court below fell in error by observing that the day to file written statement commenced from 2-5-2005 because on that day the documents were not served upon learned counsel for the petitioner herein and he asked for the copies. On 5-7-2005, learned counsel for the	

SP/FS/2005 - 20,000

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioner herein made a statement before the Court that copies of the documents were received, therefore, time to file written statement starts from that day. He further submitted that even the suit was filed by Lukasnath claiming himself to be power of attorney holder and the power of attorney was not filed along with the plaint, therefore, objection was raised on 23-8-2005 and an application to that effect was filed under Order 11 Rule 14 read with Order 7 Rule 14 of the C.P.C., and in compliance of that application of the petitioner Lukasnath filed his power of attorney on 14-9-2005, and on that day his right to file written statement was closed.

In the circumstances, without entering into controversy regarding filing of the power of attorney, it is admitted position that on the first date of hearing when learned counsel for the petitioner herein appeared before the Court below, it appears that the documents were not served upon him, therefore, he asked for the copies of the documents. Ultimately, those copies were served upon him. Learned counsel for the petitioner herein made a statement on 5-7-2005 that copies of the documents have been served upon him. Therefore, time to file written statement starts from 5-7-2005, as the complete documents were not served on counsel for the petitioner before that date, therefore, he was not in a position to file written statement.

Order 8 Rule 1 of the C.P.C. envisages that 'the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be

42

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

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recorded in writing, but which shall not be later than ninety days from the date of service of summons.' The said provision has been interpreted by the Hon'ble Apex Court in the matter of **Kailash Versus Nanhku and others** reported in **2005 AIR SCW 2346** in which it has been held that '*the provisions of Order 8 Rule 1 fixing time schedule for filing of written statement are directory and not mandatory. In exceptional cases considering the circumstances put forward by the defendant if the Court reaches to the conclusion that on account of reasons beyond the control of defendant he was not able to file written statement, then the Court should extend the time beyond 90 days.*' Same view again reiterated by the Hon'ble Apex Court in the matter of **Salem Advocate Bar Association, Tamil Nadu V. Union of India** reported in **2005 AIR SCW 3827**. Therefore, for the first time documents were not served upon learned counsel for the petitioner and he made a statement to that effect on 5-7-2005 and that 90 days' time was not expired till 14-9-2005.

Moreover, learned counsel for the petitioner makes a statement at the Bar that written statement has already been filed on 22nd September 2005 with an application to take written statement on record, but the same has been rejected by the trial Court.

In view of the above facts, learned trial Court without considering the facts mentioned above and without considering the fact that why respondent was not able to file written statement in the first instance within 90 days from 5-7-2005 and beyond that. The Court ought to have decided about filing of written statement by the petitioner herein considering all the above aspects which has not been considered in this case. Therefore, the impugned order, prima facie, is illegal which is liable to be set aside.

43

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	In the result, the writ petition is allowed and the impugned order is set aside. The trial Court is directed to consider above aspects and pass the order in accordance with law after hearing both the parties regarding extension of time or otherwise for filing the written statement. In view of this order, M.(W.)P. No.3780/2005 and I.A. No.8374/2005 stand disposed of. Parties are entitled for certified copy of this order today itself. Sd/- L.C. Bhadoo Judge	

SP/FS/2005 - 20,000

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